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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,446	01/27/2004	Franz-Peter Koch	P24670	8695

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EXAMINER	
EDEL, JOHN B	
ART UNIT	PAPER NUMBER
1731	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/20/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/20/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/764,446	KOCH ET AL.	
	Examiner	Art Unit	
	John B. Edel	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 January 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *16 January 2007* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 19 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 19 recites a step, "... delivered ...", which does not structurally differentiate it from the claim from which it depends, claim 18.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims **1, 3, 9, and 11** are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5,009,238 to Heitmann ("Heitmann").

As for claim 1, Heitman discloses a distributor device which has an input device [inlet 86 (col. 7 lines 15-35)], a preliminary distributor [rotary rake 7 (col. 4 lines 20-35)], an accumulating shaft [upright duct 16 (col. 4 lines 30-45)], a sifter [col. 4 line 55 to col 5

line 55], a conveying element [col. 5 lines 35-55], and at least one external delivery device arranged as claimed [conveyor 13[1] (col. 6 line 55 to col. 7 line 15)].

As for claim 3, Heitmann shows the accumulating shaft prior to the sifter relative to the transport direction [figure 1].

As for claim 9, Heitmann shows an additional conveying element [the vertical shaft below element 7 shown in figure 1] associated with the additional store.

As for claim 11, Heitmann shows the stores previously described as being prior to the sifter relative to the direction of the product stream [see figure 1].

Claims **20, 22, 25, 32, and 33** are rejected under 35 U.S.C. 102(b) as being anticipated by Heitmann.

As for claim 20, Heitmann teaches introducing product [product inlet 87], distributing product [col. 7 lines 45-65], measuring out product [electronic detector 18, col. 4 lines 40-60], loosening product [picker roller 22, col. 5 lines 25-40], storing product [supply 8, col. 4 lines 20-45], transporting product [elevator conveyor 13, col. 4 lines 30-45], sifting product [col. 4 line 55 to col. 5 line 55], and mixing product [col. 7 lines 45-65].

As for claim 22, the sifting occurs after the accumulation shaft [figure 1].

As for claim 25, the product stream is mixed with the further component during sifting[2].

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[1] Conveyor 13 is deemed to be an external delivery device because it delivers tobacco and or other fibers which originate externally to the distributor device.
[2] The sifting process would inherently agitate all of the particles passing through and therefore further mix them.

As for claim 32, the product stream is mixed with at least one further component [col. 7 lines 45-65] that is delivered to the sifter via a common approach [channel 28].

As for claim 33, the product and the further component is taken from different stores within the distributor device [the stores are elements 82 and 84 of figure 1].

Claim Rejections - 35 USC § 103

Claims **1-2, 4-19, and 21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Heitmann in view of United States Patent Publication No. 2002/0017307 to Barkman et al. ("Barkman").

The teachings of Heitman as modified by Barkman form an independent grounds of rejection based on a different application of the elements of Heitmann and Barkman to the claims.

As for Claim 1, Heitmann discloses a distributor device which has an input device [inlet 86 (col. 7 lines 15-35)], a preliminary distributor [rotary rake 4 (col. 4 lines 20-35)], a store [supply 8 (col. 4 lines 20-35)], an accumulating shaft [upright duct 16 (col. 4 lines 30-45)], a sifter [col. 4 line 55 to col. 5 line 55], a conveying element [col. 5 lines 35-55], and at least one external delivery device [inlet 87 (col. 7 lines 15-35)]. Barkman discloses what Heitmann fails to disclose expressly, namely that the elements of Heitmann may be rearranged so that the sifting precedes the duct/accumulating shaft [paragraph 47]. Barkman and Heitmann are analogous because both relate to supplying tobacco for tobacco rod formation. It would be obvious to provide the sifting function found in Heitmann upstream of the distributor because Barkman directly

suggests that the sifting function found in Heitmann should be located upstream of the duct. Therefore, it would have been obvious to combine Heitmann with Barkmann to obtain the invention as specified in Claim 1. All further references will be to Heitmann unless otherwise specified.

As for claim 2, the distributor device is arranged for loading a continuous cigarette machine [title].

As for claim 4, the combination noted in the rejection of claim 1 would have the accumulating shaft is located behind the sifter.

As for claim 5, the distributor device separates fractions to be processed and not processed [col. 5 lines 10-25].

As for claim 6, the external delivery device can deliver any number of components into the distributor device [col. 1 lines 5-20].

As for claim 7, the device of Heitmann as described in either treatment of claim 1 is capable of delivering at least on additional component into the product stream.

As for claim 8, Heitmann shows one additional store [supply 4 (col 4 lines 1-35)].

As for claim 9, Heitmann shows an additional conveying element [the vertical shaft below element 7 shown in figure 1] associated with the additional store.

As for claim 10, both the store and the additional store are associated with separate conveying elements [conveyor 13 and the shaft previously described].

As for claim 11, Heitmann shows the stores previously described as being prior to the sifter relative to the direction of the product stream [see figure 1].

As for claims 12 and 13, Heitmann's duct 28 [col. 4 lines 40-60] is a common approach from the delivery device, store and one additional store.

As for claim 14, the sifter comprises two approaches [col. 4 line 55 to col 5 line 55].

As for claim 15, the approaches are arranged one behind or above the other [figure 1] and the approaches comprise an approach for one additional store.

As for claim 16, the cross section of the upper approach is smaller than the cross section of the lower approach[3].

As for claim 17, the combination as made under 35 USC 103 above contemplates further external delivery devices [col. 7 lines 45-65] behind the sifter.

As for claims 18 and 19, the one further external delivery device would be capable of delivering at least one further additive [col. 1 lines 5-20].

As for claim 21 the combination of equipment described in 35 USC 103 rejection of claim 1 when operated would perform the steps of claim 20 (see above) and sift prior to the accumulation shaft, therefore making the content of claim 21 obvious to one having ordinary skill in the art of cigarette manufacture.

Claims **23-24, 26-31, and 34-35** are rejected under 35 U.S.C. 103(a) as being unpatentable over Heitman as applied to claim 20 above.

Regarding claims 23 and 27, Heitmann does not expressly disclose addition of a further component immediately prior to sifting. However, it would be obvious to add any

[3] Where channel 43 joins the main product channel the diameter is wider than prior to where channel 43 joins.

component desired in the filler that would not be substantially removed by sifting at any point in the process (including immediately prior to sifting) because doing so would result in desired filler compositions. Such addition would bring the further component to the sifter via a separate approach in the case of 'including immediately prior to sifting.'

As for claim 28, it would be obvious to add a further component to the sifter behind the product stream for the same reasons as provided in the rejections of claims 23 and 27.

As for claim 31 it is notoriously well known in the sifting art that altering the geometry of a sifter/ altering the approaches to the sifter changes the sifting properties. It would therefore be obvious to do so to obtain different sifting properties.

As for claims 24 and 26, Heitman does not expressly teach the further component being stored within the distributor device, However, it would be obvious to store the further component within the distributor device because storage close to the "further components" destination would minimize transportation costs for the "further components."

As for claim 29 and 34, it would be obvious to mix any number of further components at the exit of the sifter for the same reasoning as provided in the treatment of claims 23 and 27.

As for claim 30, figure 1 shows the exit of the sifter has a diameter which is not substantially larger than the diameter of the either of the legs of the sifter which provide air to the exit. It is therefore obvious based on the conservation of mass that the air speed is greater at the exit than at other portions of the sifter.

As for claim 35, it would be obvious to mix a further component into the product stream (via a separate approach) for the same reasons as provided in the rejection of claims 23 and 27.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Edel whose telephone number is (571) 272-4804. The examiner can normally be reached on 8:30 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JBE

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